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17 and NICHOLAS CHIM  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

ELI ATTIA, AND ELI ATTIA ARCHITECT  
PC.,

Plaintiffs,

V.

GOOGLE INC., FLUX FACTORY, INC.,  
LARRY PAGE, SERGEY BRIN,  
SEBASTIAN THRUN, ERIC "ASTRO"  
TELLER, MICHELLE KAUFMANN,  
JENNIFER CARLILE, AUGUSTO ROMAN,  
NICHOLAS CHIM, AND DOES 1-100,

## Defendants.

CASE NO.:

## DEFENDANTS' NOTICE OF REMOVAL

(Removed from the Superior Court of  
the County of Santa Clara, California,  
Case No. 2014-1-cv-274103)

State Action Filed: December 5, 2014

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446,  
4 Defendants Google LLC,<sup>1</sup> Flux Data Inc.,<sup>2</sup> Larry Page, Sergey Brin, Sebastian Thrun, Eric  
5 “Astro” Teller, Michelle Kaufmann, Jennifer Carlile, Augusto Roman, and Nicholas Chim  
6 hereby remove to this Court the state court action described below.

7 **BACKGROUND**

8 1. This case started exclusively with state-law causes of action. There has never  
9 been any basis for removal under diversity jurisdiction as there is not complete diversity. The  
10 Superior Court of California, County of Santa Clara, where this case has been pending, gave  
11 Plaintiffs leave to proceed with a Fourth Amended Complaint on October 4, 2017 that for the  
12 first time contained federal causes of action, and accordingly removal jurisdiction now lies.

13 2. On December 5, 2014, Plaintiffs Eli Attia and Eli Attia Architect P.C. filed this  
14 civil action in the Superior Court of California, County of Santa Clara, captioned Max Sound  
15 Corporation, Eli Attia, and Eli Attia Architect PC v. Google Inc., Flux Factory, Inc., Larry Page,  
16 Sergey Brin, Sebastian Thrun, Eric “Astro” Teller, Michelle Kaufmann, Jennifer Carlile,  
17 Augusto Roman, Nicholas Chim, and DOES 1-100, Case No. 2014-1-CV-274103. The initial  
18 complaint alleged exclusively state law causes of action for: (1) misappropriation of trade  
19 secrets; (2) breach of contract; (3) breach of confidence; (4) breach of the covenant of good faith  
20 and fair dealing; (5) slander of title; (6) conversion; (7) unfair competition under Cal. Bus. &  
21 Prof. Code Section 17200; (8) fraud; and (9) declaratory relief. A copy of that complaint, related  
22 civil cover sheet, and the summons as filed with the Court is attached as **Exhibit A**. Defendants  
23

24 \_\_\_\_\_  
25 <sup>1</sup> Google LLC was formerly known as Google Inc. On September 30, 2017, Google Inc. filed  
26 a Certificate of Conversion with the Delaware Secretary of State, in which Google Inc. converted  
27 from a corporation to a limited liability company and changed its name to Google LLC. Google  
28 LLC will file an appropriate paper to formally update the case caption in this matter.

<sup>2</sup> Flux Data Inc. was formerly known as Flux Factory, Inc. Recently, Flux Factory, Inc.  
became Flux Data Inc. Flux Data Inc. will file an appropriate paper to formally update the case  
caption in this matter.

1 demurred to the complaint. On July 31, 2015, the court sustained the demurrer in part. A copy  
2 of the July 31, 2015 Order is attached as **Exhibit B**.

3       3. On November 2, 2015, Plaintiffs filed a First Amended Complaint, alleging state  
4 law claims for: (1) misappropriation of trade secrets; (2) breach of contract; (3) breach of the  
5 covenant of good faith and fair dealing; and (4) declaratory relief. A copy of that complaint is  
6 attached as **Exhibit C**. Defendants again demurred. On February 1, 2016, the court sustained  
7 the demurrer in part. A copy of the February 1, 2016 Order is attached as **Exhibit D**.

8       4. On February 9, 2016, Plaintiffs filed a Second Amended Complaint, alleging  
9 exclusively state law claims for: (1) misappropriation of trade secrets; (2) breach of contract; and  
10 (3) declaratory relief. A copy of that complaint is attached as **Exhibit E**. Defendants again  
11 demurred and also filed a motion to strike certain allegations. On August 22, 2016, the court  
12 overruled the demurrer and granted the motion to strike. A copy of the August 22, 2016 Order is  
13 attached as **Exhibit F**.

14       5. On August 26, 2016, Plaintiffs filed a Third Amended Complaint, alleging the  
15 same, exclusively state-law claims as in the Second Amended Complaint. A copy of the Third  
16 Amended Complaint is attached hereto as **Exhibit G**.

17       6. On September 26, 2017, Defendants answered the Third Amended Complaint.  
18 Attached as **Exhibit H** is copy of the Google Defendants Answer. Attached as **Exhibit I** is a  
19 copy of the Flux Defendants Answer.

20       7. Also on September 26, 2017, Google filed a cross-complaint against Plaintiff Eli  
21 Attia Architect, P.C. alleging two exclusively state law claims for breach of contract, a copy of  
22 which is attached as **Exhibit J**. On October 26, 2016, Eli Attia Architect, P.C. answered  
23 Google's cross-complaint. A copy of that answer is attached as **Exhibit K**.

24       8. On July 25, 2017, Plaintiffs filed a Motion for Leave to File Fourth Amended  
25 Complaint. With it, they submitted a proposed Fourth Amended Complaint that for the first time  
26 asserted, in addition to the three state law claims asserted in the Third Amended Complaint, five  
27 federal Civil RICO causes of action under 18 U.S.C. § 1964(c). This is the first time in this case  
28 that any party sought leave to assert a claim that presents a federal question.

1       9.     On October 4, 2017, the court granted Plaintiffs' Motion for Leave to File Fourth  
 2 Amended Complaint. A copy of that Order is attached as **Exhibit L**. The Fourth Amended  
 3 Complaint was deemed filed and served on October 4, 2017. It contains five federal law causes  
 4 of action, asserted under RICO. A copy of the operative Fourth Amended Complaint is attached  
 5 as **Exhibit M**. Defendants have not responded to the Fourth Amended Complaint.

6                   **PROCEDURAL REQUIREMENTS AND JURISDICTION**

7       10.    Removal is timely pursuant to 28 U.S.C. § 1446(b)(3) because this Notice of  
 8 Removal is filed "within thirty days after receipt by the defendant, through service or otherwise,  
 9 of a copy of an amended pleading, motion, order or other paper from which it may first be  
 10 ascertained that the case is one which is or has become removable."

11       11.    As the parties are not diverse to one another, and the Fourth Amended Complaint  
 12 is the first paper in this action to raise a federal question, this case did not become removable  
 13 until Plaintiffs' Fourth Amended Complaint was deemed filed. *See Lucente S.P.A. v. Apik*  
 14 *Jewelry, Inc.*, Case No. CV-07-04005 MMM (RZx), 2007 U.S. Dist. LEXIS 99515, at \*12 (C.D.  
 15 Cal. Oct. 1, 2007) ("The removal clock begins to run when the state court grants plaintiff's  
 16 motion to amend to state a federal claim."); *Torres v. Chevron U.S.A., Inc.*, Case No. C 04-2523  
 17 SBA, 2004 U.S. Dist. LEXIS 21332, at \*6 (N.D. Cal. Oct. 18, 2004) ("removal on the basis of  
 18 federal claims asserted in a motion to amend the complaint, prior to the court's ruling on the  
 19 motion, is premature."); *Desmond v. Bankamerica Corp.*, 120 F. Supp. 2d 1201, 1204 (N.D. Cal.  
 20 2000) (noting that plaintiffs' "intent to amend a complaint" did not trigger federal jurisdiction  
 21 and that "removal in this case . . . will become available only upon the filing of an amended  
 22 complaint."); *Mejia v. Prologix Distrib. Servs. (West), LLC*, Case No. 12-CV-4840 YGR, 2012  
 23 U.S. Dist. LEXIS 163001, at \*14 (N.D. Cal. Nov. 14, 2012) ("removal jurisdiction based on an  
 24 amended pleading arises only after the subsequent pleading becomes operative.")) (citations  
 25 omitted).

26       12.    All Defendants have joined in this Notice of Removal. 28 U.S.C. §  
 27 1446(b)(2)(A).

28

1       13. Pursuant to 28 U.S.C. § 1446(d), Defendants will promptly serve a copy of this  
2 Notice on counsel for Plaintiffs and will file a copy of this Notice with the Clerk of the Superior  
3 Court for the County of the State of California, County of Santa Clara.

14. This Court now has subject matter jurisdiction over the dispute pursuant to 28  
5 U.S.C. § 1331, as the Fourth Amended Complaint contains allegations under the Federal RICO  
6 statute, 18 U.S.C. §1961 *et seq.*

## BASIS FOR REMOVAL

15. 28 U.S.C. § 1441(a) provides that “any civil action brought in a State court of  
9 which the district courts of the United States have original jurisdiction, may be removed by the  
10 defendant or the defendants, to the district court of the United States for the district and division  
11 embracing the place where such action is pending.”

12       16. The Fourth Amended Complaint alleges five causes of action under the Federal  
13 Civil RICO statute, 18 U.S.C. § 1964(c). *See* Fourth Amended Complaint ¶¶ 111-197.

14       17. The district courts of the United States have original jurisdiction over Civil RICO  
15 actions under 28 U.S.C. § 1331. The Superior Court of California, County of Santa Clara, is  
16 located within this District and Division. Venue is thus proper under 28 U.S.C. § 1441(a).

18 || Dated: October 23, 2017

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By: /s/ Charles T. Graves  
Charles T. Graves

*Attorneys for Defendants*  
GOOGLE LLC, LARRY PAGE, SERGEY BRIN,  
SEBASTIAN THRUN, and ERIC “ASTRO”  
TELLER

24 || Dated: October 23, 2017

## TURNER BOYD LLP

By: /s/ Robert J. Kent  
Robert J. Kent

*Attorneys for Defendants*  
FLUX DATA INC., MICHELLE KAUFMAN,  
JENNIFER CARLILE, AUGUSTO ROMAN, and  
NICHOLAS CHIM

## **SIGNATURE ATTESTATION**

I hereby attest that the other signatory listed, and on whose behalf the filing is submitted, concurs in the filing's content and has authorized the filing of this e-filed document.

By: /s/ Charles T. Graves  
Charles T. Graves